

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANGEL DAVID MORALES
VALLELLANES,
Plaintiff,

v.

JOHN POTTER, UNITED STATES
POSTMASTER GENERAL, ET ALS.,
Defendants.

CIVIL NO. 97-2459 (GAG)

DAMAGES BASED ON
RETALIATION AND
DISCRIMINATION; PROHIBITED
PERSONNEL PRACTICES; UNFAIR
LABOR PRACTICES; BREACH OF
COLLECTIVE BARGAINING
AGREEMENT

TRIAL BY JURY IS HEREBY
REQUESTED

MOTION REQUESTING ORDER TO PRECLUDE DEFENDANT THE USE OF
EXPERT WITNESS

COMES NOW, plaintiff Angel David Morales-Vallellanes through his legal counsel and very respectfully inform this Honorable Court:

1. Defendant failed to comply with this Honorable Court ordered deadlines and is playing games with this Honorable Court order, as Plaintiff will explain.
2. On November 2, 2006 this Honorable Court ordered Defendant to “*produce Dr. Fortuño’s FINAL report on or before 11/6/06*” and that “*Failure to comply with this mandate will result in preclusion of Dr. Fortuño’s testimony*” (docket 328).
3. On November 3, 2006 Plaintiff received a “*new*” copy of Dr. Fortuño’s report from Defendant including a letter which states that this was a “*corrected*” report. However not a **final** report. The only difference between the report sent on November 2, 2006 and the one of November 3, 2006 is that in the “*new*” report, the word “*preliminary*” was deleted and the date was changed. The rest of the report is exactly the same (ad verbatim). Moreover, in the last page of Dr. Fortuño’s report (page twelve), Dr. Fortuño states that “*I reserve the right to amend or expand this opinions*”.

A report that could be changed later is certainly a preliminary and not a final one.

4. Plaintiff can not depose Dr. Fortuño based on a report that he could conveniently change later after the deposition. This will leave Plaintiff deposition useless and without merit. In addition Plaintiff would be defenseless as to Dr. Fortuño's testimony.

5. This Honorable court order was clear and severe as to submit a **FINAL** report on or before November 6, 2006 and that ***"Failure to comply with this mandate will result in preclusion of Dr. Fortuño's testimony"***.

WHEREFORE, it is respectfully requested from this Honorable Court an order to preclude Defendant the use of expert witness Dr. Ramón O. Fortuño.

RESPECTFULLY SUBMITTED.

I HEREBY CERTIFY that on November 7, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: **Fidel A. Sevillano-Del Río, Esq.**, Assistant U.S. Attorney, Federico Degetau Federal Build., 150 Carlos Chardón Av., Hato Rey, Puerto Rico 00918.

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